IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL MISC.NO.4202 M OF 2007

DATE OF DECISION: SEPTEMBER 26, 2007

Harinder Pal Singh

.....Petitioner

VERSUS

State of Punjab and others

....Respondents

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. N. G. Sharma, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

Harinder Pal Singh, petitioner, has filed this petition, seeking pre-arrest bail in FIR No.187 dated 18.12.2006 registered under Section 420 IPC.

The allegations in the FIR against the petitioner are that he had proposed to sell his land measuring 16 Kanals in Village Chuhar Chak and in this regard executed an agreement dated 22.12.2005. He is alleged to have received Rs.6 lacs as earnest money with a promise to execute a sale deed on or before 1.5.2006. The complainant was always ready and willing to perform his part of the agreement and he appeared before the Sub Registrar, Moga, on the proposed date i.e. 1.5.2006 but the petitioner did not turn up. He has, thus, neither executed a sale deed in favour of the complainant in terms of the agreement nor has returned the earnest money of Rs.6 lacs received by him.

Noticing that the allegations were only in regard to agreement to sell, notice was issued in this application for pre-arrest bail and arrest of the petitioner was stayed on 23.1.2007. On 24.5.2007, the counsel representing the petitioner made a statement that the petitioner was prepared to return the earnest money taken by him. While adjourning the case, interim order passed in his favour was continued. On request, the case was adjourned to 13.7.2007. On the next date i.e. 20.7.2007, time was again taken to comply with the requirement of returning the earnest money in terms of the undertaking given on behalf of the petitioner on 24.5.2007. While adjourning the case, interim order was continued. On 30.8.2007, the counsel appearing for the petitioner sought permission to withdraw this petition, by saying that the cancellation report is prepared by the police. Finding this to be aimed at getting out of the undertaking given for returning of earnest money, the request was declined. Even the State counsel clearly expressed that the cancellation report is apparently prepared by managing the police in order to avoid returning the earnest money. The case was accordingly adjourned to 10.9.2007. On that day, the petitioner changed his counsel, who repeated the request for permission to withdraw this petition. In this background, the police was directed not to file the cancellation report till the next date and case adjourned.

The conduct of the petitioner in changing the counsel and repeating the request is not worthy appreciation and was accordingly commented upon in order dated 10.9.2007. Directions were issued to summon the case file to see if the cancellation report in this case was properly prepared or not. The case was then taken up for

hearing on 26.9.2007. The counsel representing the petitioner continued to stick to his stand of withdrawing this petition. A communication was also received from the District and Sessions Judge, Faridkot, to the effect that no cancellation report is presented by the police in the Court. This case is reportedly pending before the Court of Sh.Kuljit Pal Singh, Judicial Magistrate Ist Class, Moga.

It is seen that the petitioner has clearly misled this Court and had enjoyed the concession of anticipatory bail. Despite having undertaken to return the earnest money, the petitioner has made a conscious effort to back out of the same, which, is nothing but an abuse the process of Court. No person can be allowed to mislead the Courts in the manner it is done by the petitioner. Such a person does not deserve any discretion, concession, sympathy or compassion under law. Rather, he is required to be dealt with sternly under law so that such conduct is not repeated.

Mr.Berry is very fair, as usually he is, when he states that cancellation report prepared by the police in this case does not appear to be justified on the basis of material collected therein. It may be true that basically backing out of the agreement may tend to reflect a case of civil dispute but in this case the behaviour and conduct of the petitioner would clearly show that it may amount to cheating. He has taken a substantial amount as advance and the manner in which he has declined to perform his part of the agreement, would clearly show that he carried such an intention at the time of entering into an agreement. That is where the offence of cheating would reveal. Not only that his subsequent conduct where he had tried to mislead this Court as well would reflect his intention

and misconduct in having no regard for justice or law. This would also reflect his intention.

Accordingly, the present petition deserves to be dismissed. It is so ordered. The trial Court would minutely observe the file and see how without honouring the undertaking given by the petitioner, he has been able to succeed in getting a cancellation report prepared by the police. In case, it is found that the police has connived with the petitioner to help him, the trial Court would not hesitate to direct action against the police officials responsible in this regard. Let copy of this order be sent to the trial Court as well as District and Sessions Judge, Faridkot, for information.

September 26,2007 **(RANJIT SINGH)**
khurmi **JUDGE**